

Exhibit A



ISRAEL G. TORRES, ESQ.
MARIE LEVIE
JAMES E. BARTON II, ESQ.
ANNA L. CLARK
JASON McDONALD
ASHLEY I. WALKUP, ESQ.

Via Electronic Mail

June 20, 2012

Alexander Morris
FOIA Officer
1000 Independence Avenue, SW
Washington, DC 20585

RE: FREEDOM OF INFORMATION ACT REQUEST

Project Name: Solana Solar Generation Station
Location: Gila Bend, AZ
Contract Number: HQ-2012-0013-F
Our Case No.: HFI-AZ-1

Dear Alexander Morris:

Torres Consulting and Law Group, LLC (TCLG) submits this FOIA request on behalf of the Heat and Frost Insulators Local 73 a recognized 501(c)(5) non-profit organization. Accordingly, we respectfully request a waiver of all searches, printing, and duplication costs (please see attached fee waiver justification). A fee waiver is appropriate when disclosing the information requested "is in the public interest because it is likely to contribute significantly to public understanding of the operations of the government and is not primarily in the commercial interest of the requester" (5 U.S.C. § 552(a)(4)(a)(iii)).

To achieve the goals promulgated under the Davis-Bacon and Related Acts (DBRA), an analysis of the pertinent project information, including contract information and certified payrolls, is performed to ensure that compliance with DBRA is mandated and enforced.

We formally request the following information for the above-referenced project:

- ☒ 1. Three (3) weeks of the most recent certified payroll for Petrochem Insulation INC. and Brand Energy Solution & Infrastructure A.K.A Brand Energy Services;
- ☒ 2. Fringe Benefit Statement including, if applicable, apprentices;
- ☒ 3. Copy of all conformances (Additional Classification and Rate) requested and/or submitted for this project;



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- ☒ 4. Copy of all conformance request (Additional Classification and Rate) responses, approvals, denials, and/or modifications issued by the Department of Labor (DOL) for this project;
- ☒ 5. Please provide the name of the bona fide apprenticeship program and evidence of the formal certification by the DOL for a trainee program in which a trainee(s), on the job may be registered, along with the terms of the trainee program for the crafts referenced in Item 6;
- ☒ 6. Copies of Davis-Bacon compliance interviews conducted by the contracting agency for the crafts referenced in Item 6, if applicable.

TCLG strongly believes that a fee waiver is appropriate for this specific request. Disclosure of the requested information would enable the public to evaluate the wisdom and efficiency of federal programs and expenditures as well as the contractor and subcontractor's compliance with federal laws. However, if there is an assessment of fees for the processing of this request, please inform me prior to fees being incurred. Please send all requested information by email or to our office at the address listed below.

If you have any questions or concerns regarding any aspect of this request, please do not hesitate to contact me directly. Thank you in advance for your prompt attention and help in regards to this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Stevens".

Compliance Specialist

Attachment: Fee Waiver Justification

Exhibit B



Department of Energy
Washington, DC 20585

PSA-5

RECEIVED DEC 26 2012

Patrice Stevens
Torres Consulting and Law Group, LLC
209 E. Baseline Road
Suite E-102
Tempe, AZ 85283

DEC 13 2012

Re: HQ-2012-01506-F

Dear Ms. Stevens:

This letter is a final response to the request for information you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested records related to Abengoa Solana.

Specifically, you requested:

1. Three (3) weeks of the most recent certified payroll for Petrochem Insulation INC. and Brand Energy Solution & Infrastructure A.K.A. Brand Energy Services;
2. Fringe benefits statement including, if applicable, apprentices;
3. Copy of all conformances (Additional Classification and Rate) requested and/or submitted for this project;
4. Copy of all conformance request (Additional Classification and Rate) responses, approvals, denials, and/or modifications issued by the department of Labor (DOL) for this project;
5. Please provide the name of the bona fide apprenticeship program and evidence of the formal certification by the DOL for a trainee program in which trainee(s), on the job may be registered, along with the terms of the trainee program for the crafts referenced in item 6;
6. Copies of Davis-Bacon compliance interviews conducted by the contracting agency for the crafts referenced in item 6, if applicable.

Your request was assigned to the DOE's Loan Programs Office (LPO), the office most likely to have responsive documents. The LPO's search located records responsive to your request. The responsive documents have been partially withheld pursuant to Exemptions (b)(4) and (b)(6) of



the Freedom of Information Act. However, the LPO's search did not locate any documents responsive to your request numbered 2,5 and 6.

EXEMPTION 4 (5 U.S.C. § 552(b)(4))

Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), 10 C.F.R. § 1004.10 (b)(4), protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Information required to be submitted by a person is "confidential" for purposes of Exemption 4 if disclosure is likely to either: (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.

Portions deleted from the documents enclosed include sensitive commercial information that is maintained in confidence by the applicant and not available in public sources. Financial information that has been withheld includes payroll information such as individual employee's hours worked, net and gross wages, which could be used to determine total labor costs. Release of this type of information could cause substantial financial and competitive harm to this project, as competing sub-contractors could utilize this information to respond to the bid request which would result in a less competitive process now and in the future and result in a substantial increase in the cost of the project. Similarly, the release of such information could result in substantial harm to the competitiveness of the contractor in bidding future projects. *See Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 768-69 (reasoning that, among other information, a contractor's labor and wage statistics might be exempt from disclosure under Exemption 4 because disclosure could "severely damage individual enterprise and cause widespread disruption of the channels of commerce"). For these reasons this information is being withheld.

To the extent permitted by law, the DOE, pursuant to 10 C.F.R. § 1004.1, will make available records that it is authorized to withhold under the FOIA when it determines that such disclosure is in the public interest. The discretionary disclosure of the information withheld under Exemption 4 could constitute a violation of the Trade Secrets Act, 18 U.S.C. § 1905, unless its release is otherwise authorized by law. Since there is no DOE regulation or statutory authority currently in effect that constitutes an "authorization by law" for the release of the information falling within Section 1905, discretionary release of the material exempt under Exemption 4 is prohibited.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am responsible for the determination to withhold the information in the documents under Exemption 4 of the FOIA.

EXEMPTION 6 (5 U.S.C. § 552(b)(6))

Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), 10 C.F.R. § 1004.10(b)(6), protects information about individuals in “personnel and medical files and similar files when the disclosure of” such information “would constitute a clearly unwarranted invasion of personal privacy.”

In order to determine whether a document must be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the information may not be withheld pursuant to Exemption 6. Second, the agency must determine whether the release of the information would further the public interest by shedding light on the operations and activities of the government. Third, the agency must balance the identified privacy interests against the public interest in disclosure.

Portions deleted from the enclosed document contain personal information such as employee names, payroll deductions and other withholdings, check numbers, and social security numbers. A substantial privacy interest of private parties would be compromised by the release of this information, and the release of the withheld information would not serve a public interest under *Painting & Drywall Work Preservation Fund, Inc. v. HUD*, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (“Workers have a substantial privacy interest in the personal information contained in the certified payroll records,” which “outweighs the limited public interest in disclosure . . .”). For these reasons, this information is being withheld.

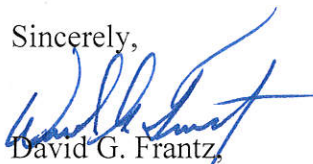
Pursuant to 10 C.F.R. § 1004.7(b)(2), I am responsible for the determination to withhold the information in the documents under Exemption 6 of the FOIA.

Pursuant to 10 C.F.R. § 1004.7(b)(2), you may appeal the adequacy of our search by following the process specified in 10 C.F.R. § 1004.8. The appeal must be made within thirty (30) days after your receipt of this letter. The appeal must be sent to the Director, Office of Hearings and Appeals, HQ-1/L’Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585-1615.

The written appeal, including the envelope, must clearly indicate that a Freedom of Information Act appeal is being made. The appeal must contain all the elements required by 10 C.F.R. § 1004.8 to the extent applicable. Judicial review will thereafter be available to you in (1) the District of Columbia, (2) the district where you reside, (3) the district where you have your principal place of business, or (4) the district where the DOE records are located.

You may obtain additional information by contacting Ms. Wendy Pulliam by email at wendy.pulliam@hq.doe.gov or by telephone at (202) 586-4347.

Sincerely,



David G. Frantz,
Acting Executive Director
Loan Guarantee Program Office
U.S. Department of Energy

Excerpt of Certified Payrolls

WEEKLY CERTIFIED PAYROLL REPORTING FORM

NAME OF CONTRACTOR: Petrochem Insulation Inc.		CONTRACTOR LICENSE NO. B4, B6 SPECIALTY LICENSE NO.		ADDRESS: B4, B6		PROJECT LOCATION / CODE / NAME: Maricopa / K24SOLANA-001 / Solana-Heavy Construction																				
PAYROLL NO. 28		FOR WEEK ENDING: 10/21/2012 SUBMITTED ON:		SELF-INSURED CERTIFICATE NO. WORKERS COMP. POLICY:		WAGE DECISION: AZ100010 Mod 8 - Heavy																				
NAME, ADDRESS, SSN, DRIVERS LICENSE, ETHNICITY, GENDER	WORK CLASSIFICATION, LOCATION	HOURS WORKED EACH DAY							TOTAL HOURS	HOURLY RATE OF PAY	GROSS AMOUNT EARNED	DEDUCTION, CONTRIBUTION AND PAYMENTS							NET WGS PAID FOR WEEK	CHECK NO.						
		10/15/2012	10/16/2012	10/17/2012	10/18/2012	10/19/2012	10/20/2012	10/21/2012				Federal Tax	Trav. Subs.	Paid in Lieu Of Fringes	Vacation Holiday	All Other	Net Paid Week	Check No.								
B6	Insulator (Heat & Frost)/Insulator (Heat & Frost)	S	(b)(4), (b)(5)	M	T	W	TH	F	S	S	B4 B6	B4	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6
B6 B6	EXEMPT	S	O	D	Rate in Lieu of Fringes:							B4	\$42.06	\$63.09	\$0.00	\$0.00										

Notes: All or Part of Fringes Paid to Employee: Voluntary Contributions in Gross Pay: Vacation, Holiday and Dues in Gross Pay: Voluntary Contributions in Gross Pay:

NAME, ADDRESS, SSN, DRIVERS LICENSE, ETHNICITY, GENDER	WORK CLASSIFICATION, LOCATION	HOURS WORKED EACH DAY							TOTAL HOURS	HOURLY RATE OF PAY	GROSS AMOUNT EARNED	DEDUCTION, CONTRIBUTION AND PAYMENTS							NET WGS PAID FOR WEEK	CHECK NO.						
		10/15/2012	10/16/2012	10/17/2012	10/18/2012	10/19/2012	10/20/2012	10/21/2012				Federal Tax	Trav. Subs.	Paid in Lieu Of Fringes	Vacation Holiday	All Other	Net Paid Week	Check No.								
B6	Insulator (Heat & Frost)/Insulator (Heat & Frost)	S	(b)(4), (b)(5)	M	T	W	TH	F	S	S	B4 B6	B4	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6	B6
B6 B6	EXEMPT	S	O	D	Rate in Lieu of Fringes:							B4	\$42.06	\$63.09	\$0.00	\$0.00										

Notes: All or Part of Fringes Paid to Employee: Voluntary Contributions in Gross Pay: Vacation, Holiday and Dues in Gross Pay: Voluntary Contributions in Gross Pay:

Exhibit C



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 24, 2013

Director
Office of Hearings and Appeals, HG-1
Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

RE: FREEDOM OF INFORMATION ACT APPEAL

Agency:	Department of Energy
Project Name:	Solana Generating Station
FOIA No.:	HQ-2012-01506-F
Our Case No.:	HFI-1

Dear Director:

This Freedom of Information Act (FOIA) Appeal is in response to the excessive redactions of certified payroll records that Torres Consulting and Law Group (TCLG) received in response to a FOIA request submitted to the Department of Energy (DOE). The DOE's response resulted in TCLG's client, the Heat and Frost Insulators Local 73 (HFI 73), obtaining unusable and unverifiable information because of the DOE's partial withholdings under FOIA's Exemption 4 (5 U.S.C § 552(b)(4)). It is our opinion that the requested information and data that the DOE redacted pursuant to the Exemption 4 claim – is improperly and incorrectly withheld from disclosure.

TCLG is a consulting firm that oversees prevailing wage compliance on construction projects throughout the United States. We monitor and provide oversight to ensure that federally funded construction projects adhere to the rules and regulations required under the Davis-Bacon and Related Acts (DBRA). Through proactive monitoring, TCLG believes that contractors will ensure that workers receive the accurate and required classification and compensation for the work they performed on these projects.

To achieve the goals promulgated under DBRA, TCLG requests pertinent project information, including contract data and certified payrolls, from the appropriate contracting agencies by following the FOIA procedures and guidelines. Upon receipt of the requested information, we are able to monitor compliance violations and report these potential situations directly to the Department of Labor, which significantly aids in achieving and raising awareness for DBRA enforcement.



In response to the FOIA Request, TCLG received documents that contained little useful information due to DOE's determination to redact a substantial amount of the pertinent data. The DOE contends that the redacted information withheld under Exemption 4 is considered a trade secret and/or commercial or financial information obtained from a person that is considered privileged or confidential and is protected from disclosure under the FOIA exemption. In this case, there is no dispute that the information requested is primarily "commercial" and that the DOE obtained the information from a "person", as the courts have defined these requirements. However, HFI 73 disagrees with the DOE's determination to consider the information privileged and confidential and ultimately withhold it from disclosure under FOIA.

Courts utilize a two-part test to determine if the withheld information is appropriately considered "privileged or confidential." Information under the third element of § 552(b)(4) is considered "confidential" if the disclosure will (1) make it harder for the government to obtain similar information in the future or (2) cause substantial competitive harm to the position of the submitter. *Nadler v. FDIC*, 92 F.3d 93, 96 (2d Cir. 1996). DBRA requires that contractors and/or sub-contractors submit certified payrolls for each employee performing work on the construction project in question. The certified payroll records must be submitted to the DOE on a weekly basis for every week work is performed on the project. The Solana Generating Station construction project requires that DOE to monitor the mandates of DBRA and to ensure strict compliance with all rules and regulations – including ensuring the submission of all certified payroll records. Therefore, the first prong of the "privileged or confidential" test does not apply because disclosing the requested information would not make it harder for the agency to gain control of the information in the future because submitting the requested information is mandatory on a federally funded construction project that has DBRA requirements attached.

The contention then turns to whether or not disclosure of the most important information needed to ensure compliance on DBRA projects, the employee's wage information (total wage package: hourly, fringe benefits, and deductions; hours worked: regular and overtime), will substantially harm the prime contractor or sub-contractors competitively. HFI 73 seeks the release of rate of pay information (hourly and fringe benefits) in order to determine compliance and to determine that the workers are receiving the prevailing wage rate for each hour of work performed as required according to the project's wage determination. Additionally, HFI 73 seeks the release of the hours worked daily and weekly (standard and overtime) to determine if employees receive the appropriate overtime pay for all overtime hours worked. A review of the hours worked on a project is also essential in determining whether a contractor is adhering to the apprentices /



trainees to journeymen ratio that should be expressly detailed within an approved apprenticeship program.

Under Exemption 4 certain information is understandably withheld from disclosure including personally identifiable information of the submitter's employees, non-public government employee names and contact information, and personal signatures. However, the wage data and hours worked – information that is necessary to determine compliance with DBRA – should not be arbitrarily withheld due to a general claim under the protection of a FOIA exemption. The release of the wage rate data (hourly rate and fringe benefits paid per hour) from the certified payroll documents would not cause substantial competitive harm because all contractors are aware of the requirement to pay the prevailing wage rate and benefits as it is stipulated and incorporated into the project contract through the DOL published - and publicly accessible – wage determination. Disclosure of the hours worked on a project's job-site should not be protected under Exemption 4 because this information is readily observable on most projects and is the primary way to establish if a contractor complies with apprenticeship guidelines mandated by federal law. The number of hours worked, daily and weekly, for a given employee as stated on the certified payroll records demonstrates that the worker is being paid for every hour worked and that the contractor is not simply using a required base wage rate to back into DBRA compliance. The wage rate, fringe benefits, and apprenticeship guidelines that are stipulated by the contract cannot be considered confidential and the release of the information would not cause a competitive disadvantage to the submitter.

TCLG only requests, on behalf of our clients, the minimum amount of information necessary to determine compliance on a federally funded construction project. The requested wage information is essential in our efforts to monitor DOE's enforcement of DBRA and to determine whether contractors pay the prevailing wages, as they are required by law and by the contract's wage determination. Once compliant behavior is determined, the case is closed. DOE has determined that the sub-contractor's claim to withhold the basic wage information associated with this project would substantially harm them competitively. We respectfully disagree, the project bid is based on many numerous and extremely precise and different elements. Providing a three-week time span for only the trade work performed would not allow a competitor to gain a **substantial** competitive advantage in pricing future bids even on similar projects because too many other variables are combined to estimate a bid price.

Attached to this letter, TCLG has included the following information to assist in your review of the determinations made in regards to this specific FOIA request:



- TCLG FOIA Request – Dated June 20, 2012
- DOE Response Re: FOIA Request HQ-2012-01506 – Dated Sept. 25, 2012
- DOE FOIA Response – Dated December 13, 2012

If you have any questions or concerns regarding this submittal, please do not hesitate to contact me directly. Thank you for your time and assistance in helping us resolve this issue. I look forward to speaking with you soon.

Sincerely,

Ashley Walkup
Torres Consulting and Law Group, LLC

Enclosures (as stated)

Exhibit D

HELAZ-1



Department of Energy
Washington, DC 20585

RECEIVED FEB 28 2013

FEB 25 2013

Ms. Ashley Walkup
Torres Consulting & Law Group, LLC
2239 West Baseline Road
Tempe, AZ 85283

Re: Case No. FIA-13-0004

Dear Ms. Walkup:

The Department of Energy (DOE) has considered the Freedom of Information Act Appeal you filed on behalf of Torres Consulting & Law Group, LLC, on February 1, 2013. As the enclosed Decision and Order indicates, the DOE has determined that the Appeal, Case No. FIA-12-0004, be denied.

If you have any questions regarding this Decision and Order, please contact Janet R. H. Fishman, Attorney-Examiner, at the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC, 20585, telephone number (202) 287-1579.

Sincerely,

for 
Poli A. Marmolejos

Director
Office of Hearings and Appeals

Enclosure





Department of Energy
Washington, DC 20585

RECEIVED FEB 28 2013

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Torres Consulting & Law Group, LLC)

Filing Date: February 1, 2013)

Case No.: FIA-13-0004)

Issued: FEB 25 2013

Decision and Order

On February 1, 2013, Torres Consulting & Law Group, LLC, (Appellant) filed an Appeal from a determination issued to it on December 13, 2013, by the Loan Guarantee Program Office (LGPO) of the Department of Energy (DOE) (Request No. HQ-2012-01506-F). In that determination, LGPO released documents responsive to the request the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. LGPO withheld portions of the released documents under Exemptions 4 and 6 of the FOIA. This Appeal, if granted, would release the employee wage rates and total hours worked, both daily and weekly, from the documents at issue.

I. Background

On June 20, 2012, the Appellant filed a request with the DOE's Office of Information Resources (OIR) for "three weeks of the most recent certified payroll records from Petrochem Insulation Inc. and Brand Energy Solution & Infrastructure" from the Solana Solar Generation Station project (Solana project) in Gila Bend, Arizona. Request Letter dated June 20, 2012, from Appellant to Alexander Morris, FOIA Officer, OIR, DOE. In addition, the Appellant also requested from the Solana project:

- Fringe Benefit Statements including apprentices;
- All conformance requested and or submitted;
- All conformance request responses, approvals, denials, and/or modifications issued by the Department of Labor (DOL);
- The name of the bona fide apprenticeship program and evidence of the formal certification by the DOL for a trainee program in which a trainee(s) may be registered, along with the terms of the trainee program for the crafts referenced; and
- Copies of the Davis-Bacon compliance interviews conducted by the contracting agency for the crafts referenced.



Id. at 1-2. On September 25, 2012, OIR responded, indicating that it was assigning the request to LGPO. Letter dated September 25, 2012, from Alexander Morris to Appellant. On December 13, 2012, LGPO responded by releasing a number of documents but withholding some information from those documents under Exemptions 4 and 6 of the FOIA. Determination Letter dated December 13, 2012, from LGPO to Appellant. LGPO also stated that it found nothing responsive to three of the Appellant's requests.^{1/}

On February 1, 2013, the Appellant filed an Appeal with the Office of Hearings and Appeals (OHA) challenging only the information withheld under Exemption 4, *i.e.*, the rate of pay and hours worked both daily and weekly. Appeal Letter dated January 24, 2013, from Ashley Walkup, Appellant, to Director, OHA, DOE. The Appellant argues that release of this information will not allow a competitor to gain a "substantial competitive advantage in pricing future bids, even on exactly similar projects." *Id.* at 3.

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. The FOIA, however, lists nine exemptions that set forth the types of information that may be withheld at the discretion of the agency. 5 U.S.C. § 552(b)(1)-(9). Those nine categories are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)-(9). We must construe the FOIA exemptions narrowly to maintain the FOIA's goal of broad disclosure. *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001) (citation omitted). The agency has the burden to show that information is exempt from disclosure. *See* 5 U.S.C. § 552(a)(4)(B). The DOE regulations further provide that documents exempt from mandatory disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is in the public interest. 10 C.F.R. § 1004.1. Exemption 4 is at issue in this Appeal.

Exemption 4 shields from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4). Accordingly, in order to be withheld under Exemption 4, a document must contain either (a) trade secrets or (b) information that is "commercial" or "financial," "obtained from a person," and "privileged or confidential." *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (*National Parks*). If the agency determines that the material is a trade secret for the purposes of the FOIA, its analysis is complete and the material may be withheld under Exemption 4. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1286, 1288 (D.C. Cir. 1983). If the material does not constitute a "trade secret," a different analysis applies. The agency must determine whether the information in question is "commercial or financial," "obtained from a person" and "privileged or confidential."

The Appellant is not challenging whether the information withheld, employee wage rate and total hours worked both daily and weekly, is either commercial or financial or obtained from a person. Appeal Letter at 2. We therefore must determine whether the information is privileged or confidential. For the reasons set forth below, we find that the information is confidential and therefore exempt from release under Exemption 4.

^{1/} The Appellant does not challenge the adequacy of LGPO's search.

In this case, the contractors were required to submit the documents in question as part of their contracts with LGPO. Accordingly, we find that the withheld information was "involuntarily submitted." Under *National Parks*, involuntarily submitted information is confidential if its release would be likely to either (a) impair the government's ability to obtain such information in the future, or (b) cause substantial harm to the competitive position of submitter. *National Parks*, 498 F.2d at 770. In applying Exemption 4 to the documents at issue, LGPO determined that release of the information would likely cause the contractors substantial competitive harm.

The Appellant states that the argument in this case turns on whether or not release of the information will substantially harm the prime contractor or sub-contractors competitively. Appeal Letter at 2. The Appellant argues that release of the wage rate data from the certified payroll documents would not cause substantial competitive harm because all contractors are aware of the requirement to pay the prevailing wage rate and benefits as it is stipulated and incorporated into the project contract. *Id.* at 3. In addition, the Appellant argues that disclosure of the hours worked on a project's jobsite should not be protected under Exemption 4 because this information is readily observable on most projects and is the primary way to establish if a contractor complies with apprenticeship guidelines mandated by federal law. *Id.* Finally, the Appellant argues that the number of hours worked, daily and weekly, for a given employee demonstrates that the worker is being paid for every hour worked and that the contractor is not simply using a required base wage rate to back into Davis-Bacon Act compliance. *Id.* In sum, the Appellant argues that the wage rate, fringe benefits, and apprenticeship guidelines cannot be considered confidential and the release of the information would not cause a competitive disadvantage to the submitter.

LGPO determined that release of the commercial and financial information contained in the documents would likely cause the contractors substantial competitive harm. We believe that release of the information would give the contractors' competitors an undue advantage when submitting proposals in the future because competing contractors could utilize this information to respond to a bid request which would result in a less competitive process and result in a substantial increase in the cost of a similar project. In addition, release of the financial information would give the contractors' competitors an undue advantage in bidding on future contracts. Therefore, we find that LGPO properly applied Exemption 4 to the withheld information in the released documents and properly withheld the total hours worked and total pay received.

III. Conclusion

After considering the Appellant's arguments, we are convinced that LGPO properly withheld the redacted information from the documents under Exemption 4. Accordingly, the Appeal should be denied.


It Is Therefore Ordered That:

(1) The Appeal filed by Torres Consulting & Law Group, LLC, Case No. FIA-13-0004, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
Toll-free: 1-877-684-6448


for Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: FEB 25 2013